

## **REMARKS**

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner.

Upon entry of the present Amendment, Claims 1-2, 10-19, and 23-27 will be all the claims currently pending for the Examiner's consideration. Of the pending claims, Claims 1, 2, and 10-19 are withdrawn from consideration.

Instantly, Claims 1 and 13 have been amended. Claims 3-9 and 20-22 are canceled. Claims 23-27 are newly added. Applicants respectfully submit no new matter has been added by the present amendment. Support for the amendment can be found generally throughout the disclosure. It should be noted this amendment is not in acquiescence of the Office's position on the allowability of the claims, but merely to expedite prosecution.

The Office is respectfully requested to reconsider the rejections presented in the outstanding Office Action in light of the following remarks.

### **I. AMENDMENTS IN VIEW OF THE CITED ART:**

As indicated above, Claims 23-27 are newly added claims directed toward various novel and unobvious aspects of the present invention. Of these claims, Claims 23, 25 and 27 are independent claims, the remaining new claims depending from Claims 23 and 25.

New Claim 23 relates to thiachloprid and preferred quaternary ammonium compounds. Erdelen et al., US Pat. Pub. No. 2003/0149080 (hereinafter "Erdelen") fails to teach any quaternary compounds while Fritschi, EP1025967 (hereinafter "Fritschi") fails to teach both thiachloprid and the claimed quaternary ammonium compounds. At most Fritschi may teach didecyldimethylammonium chloride and didecylmethyl pyloxyethyl ammonium propionate (Pg. 3, Para. 0013), which are not claimed. In light of the above, Claims 23 and 24 are clearly distinguishable over the cited art as neither reference either alone or in combination teaches all of the claimed limitations.

New Claim 25 relates to thiachloprid and the preferred boron compounds, boric esters and borax. As such, Erdelen fails to teach or suggest the specific boron compounds claimed, while Fritschi fails to teach both thiachloprid and the claimed boron compounds. In light of the above, Claims 25 and 26 are clearly distinguishable over the cited art as neither reference either alone or in combination teaches all of the claimed limitations.

Finally, new Claim 27, relates to a synergistic combination of thiachloprid and boric acid. As indicated per the previously submitted Declaration, the combination of thiachloprid and boric acid yields an unexpected synergy; therefore, the combination of Erdelen and Fritschi does not render the claimed synergistic combination obvious.

## **II. OUTSTANDING REJECTIONS:**

Claims 21 and 22 are rejected under 35 USC 112, first paragraph.

Claims 3 and 5 are rejected under 35 USC 102(a/e) in view of Erdelen.

Claims 3, 5-6, and 21-22 are rejected under 35 USC 103(a) as being obvious over Erdelen in view of Fritsch.

Applicants continue to disagree for those reasons previously provided; however, Applicants submit, the rejections are now moot in light of the cancellation of the relevant claims.

Withdrawal of the rejections is appropriate at this juncture.


## **II. CONCLUSION:**

In view of the foregoing, it is respectfully submitted that independent Claims 23, 25, and 27 fully distinguish over the applied art and are thus in condition for allowance. By virtue of dependence from what are believed to be allowable independent claims, it is respectfully submitted that Claims 24 and 26 are also presently allowable.

Notice to the effect is earnestly solicited. If there are any further issues in this application, the Examiner is invited to contact the undersigned at the telephone number listed below.

The USPTO is hereby authorized to charge any fees which may be required by this paper and/or to credit any overpayments to Deposit Account No. 50-2527.

Respectfully submitted,

By   
Nicanor A. Köhncke  
Attorney for Applicants  
Reg. No. 57,348

LANXESS CORPORATION  
Law & Intellectual Property Department  
111 RIDC Park West Drive  
Pittsburgh, Pennsylvania 15275-1112  
(412) 809-2234  
FACSIMILE PHONE NUMBER:  
(412) 809-1054

s:\law shared\shared\patents\8000-8999\8458\8458 response & amendment nov 2010.doc